

Tax Type: MOTOR FUEL TAX

Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE )  
OF THE STATE OF ILLINOIS )  
 )  
v. ) Docket # XXXXX  
 )  
XXXXX ) License # XXXXX  
 )  
Taxpayer )

## RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX, Truck owner.

SYNOPSIS: This matter came on to be heard following a protest by XXXXX (hereinafter "Taxpayer") of an assessment issued against it by the Illinois Department of Revenue (hereinafter "Department") for a \$1,000.00 penalty for operating a commercial motor vehicle in Illinois without registering and securing an Illinois Motor Fuel Use Tax Permit.

On January 25, 1995, the Department sent a notice of hearing to the taxpayer setting the evidentiary hearing for February 14, 1995.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by admission into the record Notice of Tax Liability No. XXXXX issued on October 14, 1994, to the Taxpayer for failure to operate with a valid fuel permit and without properly displaying decals. (Dept. Exhibit #2).

2. Also entered into the record was the Illinois Commerce Commission Police Citation memorializing that the Taxpayer's agent was stopped in Stark County operating a 1989 International Truck tractor without a Motor Fuel Tax Identification Card. (Dept. Ex. #3).

3. The Taxpayer entered no documentary evidence into the record. The Taxpayer testified that the aluminum plates whereupon the decals were allegedly placed he removed from the truck prior to the drive through Stark County, in preparation to sell the truck. (Tr. at p.7).

4. The Department has no record of the issuance of the subject decal.

CONCLUSIONS OF LAW: Pursuant to legislative authority expressed in Illinois Compiled Statutes (see 20 ILCS 2505/39b et seq.) the Department is empowered to administer and enforce the terms and conditions of the Illinois Motor Fuel Tax Law.

Section 505/13a.4 states in part:

Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a permit from the Department. Application for such permit shall be made to the Department on forms prescribed by the Department. The application shall be under the oath, and shall contain such information as the Department deems necessary...

Upon receipt of the application for permit in proper form, and upon approval by the Department of the bond furnished by the applicant, the Department shall issue to such applicant a permit which allows the operation of commercial motor vehicles in Illinois and identification cards or devices for each commercial vehicle in Illinois...

On and after January 1, 1985, an external motor fuel tax identification device shall be conspicuously displayed on the passenger side of each commercial vehicle propelled by special fuel operating in Illinois... Such identification device shall be in the form of a decal no larger than 3 inches by 5 inches...

On examination of the record established, this taxpayer has failed to demonstrate by the presentation of testimony or through exhibits or argument, evidence sufficient to overcome the Department's prima facie case of tax liability under the assessment in question. Accordingly, by such failure, and under the reasoning given above, the determination by the Department that the Taxpayer was not registered for Motor Fuel Use Tax at the subject time; and is subject to the \$1,000.00 penalty assessment imposed by the Illinois Motor Fuel Tax Law, must stand as a matter of law.

RECOMMENDATION: Based on the above, I recommend the Department  
finalize Assessment No. XXXXX in its entirety.

William J. Hogan  
Administrative Law Judge